

**THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MFB Fertility, Inc.,

Plaintiff,

v.

Action Care Mobile Veterinary Clinic, LLC,

Defendant.

Case No. 1:23-cv-03854

Dist. Judge Harry D. Leinenweber

Mag. Judge Gabriel A. Fuentes

DEFENDANT’S MOTION TO CLARIFY

Defendant/Counter-plaintiff Action Care Mobile Veterinary Clinic, LLC (“Action Care” or “Defendant”), by its counsel, respectfully submits this motion to clarify the Court’s minute entry order (“Minute Order”) [Dkt. 34] and accompanying memorandum opinion and order (“Court’s Memorandum”) [Dkt. 35], both of which were issued by the Court on April 22, 2024.

1. In the Minute Order, the Court explicitly states that “Defendant’s Motion to Dismiss is fully GRANTED.” In turn, the Court’s Memorandum states that “the Court fully GRANTS Defendant’s Motion to Dismiss.” The Court’s Memorandum provides extensive reasoning for why Plaintiff/Counter-defendant MFB Fertility, Inc.’s (“MFB” or “Plaintiff”) copyright infringement claim fails.

2. Defendant’s Motion to Dismiss [Dkt. 10] and accompanying brief [Dkt. 11] included a petition for an award of Defendant’s attorneys’ fees and reasoning therefor. (*See* Dkt. 11 at 10–15.) Neither the Minute Order nor the Court’s Memorandum mentions Defendant’s petition for an award of attorneys’ fees under Section 505 of the Copyright Act.

3. Action Care construes the Court’s “full grant” of Action Care’s motion to dismiss as including a grant of Action Care’s petition for attorneys’ fees and costs (with the amount to be proved up in subsequent filings). Action Care notes, however, that the Seventh Circuit has

previously reversed district courts' entry of fees under Section 505 of the Copyright Act when "the district court failed to consider the *Fogerty* factors or reached an obviously wrong result when considering them." *UIRC-GSA Holdings, LLC v. William Blair & Co.*, No. 23-1527, at *15 (7th Cir. Jan. 12, 2024) (citing *Mostly Memories, Inc. v. For Your Ease Only, Inc.*, 526 F.3d 1093, 1099 (7th Cir. 2008); *Eagle Servs. Corp. v. H2O Indus. Servs., Inc.*, 532 F.3d 620, 623 (7th Cir. 2008)). Action Care wishes to avoid any potential arguments by MFB that an award of attorneys' fees and costs to Action Care is improper.

Action Care therefore respectfully requests that the Court: (i) clarify whether its "full grant" of the motion to dismiss included a grant of Action Care's petition for attorneys' fees and costs in relation to the dismissal of Plaintiff's copyright infringement claim; and (ii) provide substantive reasoning applying the *Fogerty* factors in this case, so as to avoid potential reversal of the Court's ruling with respect to Action Care's motion for attorneys' fees.

Dated: April 22, 2024

Respectfully submitted,

ZLATKIN CANN ENTERTAINMENT

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